

## MINUTES

### WARRICK COUNTY AREA PLAN COMMISSION

Regular meeting to be held in Commissioners Meeting Room,  
Third Floor, Historic Court House,  
Boonville, IN  
Monday, August 13, 2018, 6:00 PM

**PLEDGE OF ALLEGIANCE:** A moment of silence was held followed by the Pledge of Allegiance.

**MEMBERS PRESENT:** Bill Byers, Guy Gentry, David Hachmeister, Bob Johnson, Amanda Mosiman, Doris Horn, and Jeff Willis.

Also present were Morrie Doll, Attorney, Molly Barnhill, Assistant Director, and Kim Kaiser staff.

**MINUTES:** Upon a motion by Bob Johnson and seconded by Jeff Willis the Minutes from the regular meeting held July 9, 2018 were approved as circulated.

The President explained the Rules and Procedures. He stated they have a request from a petitioner because they have a previous engagement they have to get to so they will be jumping around on the agenda a bit.

### **SUBDIVISIONS FOR PRIMARY PLAT APPROVAL:**

**PP-18-09- Three Pine Bluff by Gerald and Gloria Lewis, Owners** 4.073 acres located on the S side of Oak Grove Rd. Approximately 550' E of the intersection formed by Oak Grove Rd and SR 261. Ohio Twp. *Complete legal on file. Advertised in the Standard August 2, 2018.*

Greg Kissel with Kissel Land Surveying was present.

The President stated let the record show that the petitioners are present.

Mrs. Barnhill stated they have all of the return receipts. She said the front 200' of the property is zoned "R-1A" and the remainder of the property is zoned Agricultural. She said there is no flood plain and this is 2 residential lots with 1 outlot. She said the Commissioners approved no improvements to Oak Grove Road. She said Drainage Board approved their request for drainage plans. She said they have approved septic sites on the new building site, which is lot 2, and lot 1 has an existing house with an existing system. She stated Chandler has water capacity. She said there is an existing single family dwelling on lot 1. She said lot 2 will be another building site and the outlot is to go to the adjacent property owner to the south of this development. She said they have submitted a request to waive sidewalks along Oak Grove Road and everything is in order.

The President asked if they had anything to add to the staff report.

Mr. Kissel said no but he is here to answer any questions.

The President said this is a two lot subdivision with just one new home being built on that lot.

Bob Johnson asked about the waiver on the sidewalks.

Mr. Kissel said that is correct, there are no sidewalks to the east or west in that area and that is what they are asking. He said this would typically be a minor subdivision but in this case it's a major because of the existing zoning.

Mrs. Barnhill stated it is an ordinance requirement so we made them submit a dollar amount on them.

Ascertaining no remonstrators present and no further questions from the Board the President called for a motion on the sidewalk waiver.

Bob Johnson made a motion to approve the sidewalk waiver. Doris Horn seconded and it was unanimously carried.

The President called for a motion on the plat.

Amanda Mosiman made a motion to approve PP-18-09. The motion was seconded by Bob Johnson and unanimously carried.

### **REZONING PETITIONS:**

**PC-R-18-07 – Petition of Ken Favor** to rezone 1.78 acres located on the E side of Coal Mine Rd. approximately 264' N of the intersection formed by Coal Mine Rd. & Oak Grove Rd. from "A" Agriculture to PUD consisting of "R-1" One Family Dwelling zoning district. With a Use and Development Commitment. Ohio Twp. *(Complete legal on file.) Advertised in the Standard May 14, 2018. Continued from June 11, 2018 and July 9, 2018.*

Bill Bivins was present.

The President called for a staff report.

Mrs. Barnhill stated we do have all of the return receipts. She said minimum lot size for R-1 is 6,000 s.f. but the Planned Unit Development relaxes that. She said the Comprehensive Plan projects this area to be moderate to high density residential. She said the existing land use is a single family dwelling with unattached accessory buildings. She said they will be removed prior to the subdivision going in. She said the surrounding zoning and land uses are to the north, east, and south are zoned agriculture with mostly single family dwellings. She said the property to

the west is zoned "R-1A" with single family dwellings. She said they have submitted a primary plat - Enclave at Oak Grove PUD to go with this rezoning. She said there is no flood plain and the property has access to Coal Mine Rd. She said the stated use is 17 lot Planned Unit Development with 16 single family dwellings and one outlot for retention which would be allowed. She said they also have submitted a Use and Development Commitment with this rezoning limiting the use to Single Family homes. She said since the rezoning is for PUD/R1 a Use and Development is really not needed because only single family homes could go in that zoning anyway.

Bill Bivins said the drainage and street plans have been approved. He said the Commissioners were concerned about the density and he has done some research to show what the density is around the area. He said they have redesigned the PUD to ensure they had 10' separation between buildings, which meets the Building Code therefore firewalls are not required.

Bob Johnson asked if he reduced the number of houses or how did he get the extra room.

Bill Bivins said they had some extra footage along the east side of Enclave Lane and that is where we picked up enough footage to make everything work. He said 10' is the minimum they have and then they have 10'2" and 10'6" separation and on the south side of the entrance there is 14' separation.

The President asked for the staff report on the Primary Plat.

**PP-18-04- The Enclave At Oak Grove PUD by Ken Favor** 1.78 acres located on the E side of Coal Mine Rd. approximately 264' N of the intersection formed by Coal Mine Rd. & Oak Grove Rd., Ohio Twp. *Complete legal on file. Advertised in the Standard May 14, 2018. Continued from June 11, 2018 and July 9, 2018.*

Mrs. Barnhill said on the plat, PP-18-04, the notices were mailed with the rezoning so we have all of those. She said it's zoned agricultural and they want to make it a PUD consisting of R-1. She said there is no floodplain. She said they are proposing 16 residential lots with 1 outlot for a retention basin, that has changed it is 16 residential lots instead of the 17. She said they have private streets and will be required to post surety to guarantee their construction. Commissioners approved their street plans on July 23, 2018. She said the Drainage Board approved their drainage plans on July 23, 2018. She said Chandler has water and sewer capacity. She said the original plat you saw showed 17 lots with an outlot. She said this plat has 16 lots with one outlot to allow larger side yards between the homes because anything under 10' would require a 2 hour firewall. She said the minimum lot size in "R-1" is 6,000 sf with a minimum of 60' at the building line but the PUD may relax those requirements. She said the primary plat shows the narrowest lots are 33.5' wide with the smallest lot being 2,761 s.f.. She said typical residential setbacks are 25' front and back yards and they are proposing 18' front yards and 12' backyards with the smallest backyard being 5.1'. She said on corner lots the ordinance allows for a 15' side

yard and this development has 2 corners lots; one with a 6.1' side yard and one with a 8.32' side yard. She said Dennis Lockhart stated "if the buildings are less than ten feet apart, there has to be a two (2) hour firewall." Mrs. Barnhill added they have submitted a request to waive sidewalks along the East side of lot 5. She said so any conditions would be The PUD rezoning to be approved by the County Commissioners, firewalls be installed as required by Dennis Lockhart and the sidewalk waiver approved by the Area Planning Commission. She added the plat is in order.

Jeff Willis asked if Enclave Court was expected to go anywhere or was it just to get to those houses.

Mr. Bivins said sorry.

The President said Enclave, there are no cul-de-sacs, they are just stubbed out at the property line.

Mr. Bivins said yes they were approved by the County Engineer.

The President asked if it was for future development.

Mr. Bivins said yes for future development. He said it should be noted that for their drainage plans they took in four-tenths of an acre off drainage to the east to control that in their retention basin.

Ascertaining no questions from the Board and no remonstrators present the President called for a motion.

Amanda Mosiman said she understands it is mirroring the same amount of density but what's the smallest lot to the south here off Coal Mine Road. She asked if these lots that much smaller than the other residents in the area; these seem awfully small.

Mr. Bivins said they are about 11/100's of an acre and the....

Amanda Mosiman said south of Coal Mine Road, approximately how big are those lots.

Mr. Bivins said they are about 1/4 acre. He said the concern was the density and within 500 feet of this property are 4 unit apartments which are more dense than we are.

Jeff Willis asked if that was 6 feet away from the road; is that the right-of-way or how big are the roads going to be. He said he's looking at the curves where there's 8 feet and 6 feet as people are trying to turn in the right-of-way but he didn't know how big.

Mr. Bivins said the roads are 24 feet wide with rolled curb and gutters.

The President said which are the requirements for a private road.

Mr. Bivins said these are private roads maintained by the units there. He said on the west side of Coal Mine Road all of those houses access directly to Coal Mine Road and we will only have one access and there is a daycare adjacent to our property to the north, which will generate more traffic than what we will produce.

The President called for a motion.

Bill Byers made a motion to give a positive recommendation to the Commissioners on PC-R-18-07. The motion was seconded by Doris Horn. Amanda Mosiman opposed the motion. Motion carried 6-1.

The President said this will go to the Commissioners with a positive recommendation and it will be up to them. He called for a motion on the sidewalk waiver.

Jeff Willis asked if there was going to be off street parking.

Mr. Bivins said no there is parking in front of all of the buildings.

Jeff Willis said will it be on the street or...

The President said well if they are parking there then there is no where to put the sidewalks.

Jeff Willis said then there is no where to turn around either.

Mrs. Barnhill said the waiver said the sidewalk waiver is only for the east side of lot 5.

Amanda Mosiman said so they are planning on putting sidewalks everywhere else.

Mrs. Barnhill said yes.

Attorney Doll said why.

Jeff Willis said because it would be up next to the house; it'd be 2 feet from the house.

Doris Horn made a motion to approve the sidewalk waiver along the east side of lot 5. Guy Gentry seconded the motion. Several members voted against the motion. The President asked for a roll call.

Bill Byers, nay; Guy Gentry, yea; David Hachmeister, yea; Bob Johnson, yea; Amanda Mosiman, nay; Doris Horn, yea; Jeff Willis, yea. Motion carried 5-2

The President called for a motion on the primary plat which will be conditioned upon the Commissioners approval of the rezoning.

Doris Horn made a motion to approve PP-18-04. Bob Johnson said Mr. Bivins did what he asked him to do so he will second the motion.

Amanda Mosiman asked if a condition needed to be firewalls.

Attorney Doll said not if they are 10 feet.

Jeff Willis asked where will the people be parking; in the street or off street in front of the house.

Mr. Bivins said they will have garages, they will be parking in and in front of the garages.

Jeff Willis asked what happens if they don't take care of the private streets; who does that fall back on.

Mr. Bivins said the homeowners association. He said after 50% of the lots have sold then the homeowners association will take it over.

The President said lets take a vote. Amanda Mosiman opposed the motion so it was carried 6-1.

The President said this will go to the County Commissioners on September 10<sup>th</sup> at 4:00 pm for the rezoning.

**PC-R-18-11 – Petition of Rodney Nicholson by Rodney and Angela Nicholson, Owners** to rezone 3.89 acres located on the E side of Hills Rd. and the S side of SR 66. Approximately 2,200' E of the intersection formed by Hills Access Rd. and Hills Rd. Being part of Lot 1 in Nicholson Subdivision. From an "R-MH" Mobile Home to "CON" Recreation and Conservancy Zoning District. Anderson Twp. *1477 Hills Rd. Advertised in the Standard August 2, 2018.*

The President said he skipped one but this should be a quick one.

Rodney Nicholson was present.

The President called for a staff report.

Mrs. Barnhill stated we are missing 2 green cards from Todd & Kayda Morris and Jill Fletcher but we do have all of the pay receipts showing they were mailed correctly. She said the minimum lot size for CON zoning is ½ acre. She said the portion of ground being rezoned is part of a 38.14 acre lot with a single family dwelling. She said the R-MH zoning was done as part of an old subdivision that has since been vacated and included into this lot. She said the properties to the East, and South are zoned Agricultural and Recreation & Conservancy. They are mostly wooded with a few single family dwellings. She said the property to the North and West is zoned R-MH being Turner Mobile Home Subdivision and SR 66. Mrs. Barnhill stated they have an SU 18 filed with the Board of Zoning Appeals for a tower which is not allowed in the R-MH Zoning. She said they had to file the rezoning before they could file the SU 18. She said they are not in the flood plain and they have an existing drive off of Hills Road. She said the stated use is a single family dwelling which would be in compliance. She added that the application is in order.

Rodney Nicholson had nothing to add to the staff report.

Ascertaining no questions from the Board and no remonstrators present the President called for motion.

Bob Johnson made a motion to give PC-R-18-11 a positive recommendation to the Commissioners. The motion was seconded by Jeff Willis and unanimously carried.

Rodney Nicholson asked if they could waive the requirements and have his application expedited to be heard at the Commissioners August 27<sup>th</sup> meeting. He said that is the same day his Variance is being held.

Attorney Doll said if there is a motion they could expedite this and it could go all in one day.

The President asked if they would have everything prepared in time.

Mrs. Barnhill said they have to do the minutes but they could get those done. She said they only have to have the minutes pertaining to his rezoning; yes.

Bill Byers made a motion to allow the rezoning to go to the Commissioners on August 27, 2018. The motion was seconded by Doris Horn and unanimously carried.

**PC-R-18-10 – Petition of BBCF Properties, LLC by William Felts, Mbr.** to rezone 3.02 acres located on the S side of Sharon Rd. approximately 100' E of the intersection formed by SR 66 and Sharon Rd. from an "A" Agricultural to "C-4" General Commercial Zoning District, Ohio Twp. *Complete legal on file. Advertised in the Standard May 31, 2018. Continued from June 11, 2018 and July 9, 2018.*

Scott Buedel was present.

The President asked for a staff report.

Mrs. Barnhill stated we have all of the return receipts. She said there is no minimum lot size for C-1 zoning. She added that this application was amended to C-1 at the July 9<sup>th</sup> meeting. She said the Comprehensive Plan projects the area to be high density residential bordering commercial. She said the existing land use is a vacant lot. She said the surrounding zoning and land use is it's vacant C-3 to the north; agricultural to the east with a residence; C-1 to the west with a business. agricultural and C-3 to the south with a residence. She said there is no flood plain. She said the property fronts SR 66 which is limited access. She said the aerial shows an access point off SR 66 however they will need INDOT verification, it is suitable as a commercial entrance. She said they will also need to obtain a commercial driveway permit off Sharon Rd. She said the stated use is a Gas Station/Convenient Store which would be allowed in a C-1. Mrs. Barnhill stated this rezoning was downzoned to C-1 at the last APC meeting and continued to give the owner and remonstrators time to come up with a Use & Development Commitment. She said they

have submitted an updated ordinance with the C-1 Zoning and a Use & Development Commitment that states

*The Use of the Real Estate shall be limited to the following development requirements:*

- a. Construct an earthen berm along the east side of the subject property. The minimum height of the berm to be constructed will be 5 feet above the existing ground elevation. The top of the berm will be 10 feet wide and the side will not be steeper than a 3 to 1 slope. The dimensions of the berm are shown on the attached site plan.*
- b. Install two rows of Green Giant Arborvitae trees on top of the earthen berm. The minimum height of the trees, at the time of planting, shall be 4 feet. The trees will be in a line spaced a maximum of 10 feet apart and the second row will be in a line spaced 10 feet apart and offset 8 feet from the first row in a staggered location.*
- c. The location and dimensions of the trees are shown on the attached site plan. Trees shall be installed prior to obtaining a certificate of occupancy for the commercial use of the property.*
- d. The owner shall have the obligation to maintain and replace the trees within 4 months of death or other destruction.*
- e. Directional lighting at the entrances, along drive isles and around the property will be used to minimize light exposure to the adjoining property to the east.*
- f. Trash receptacles shall be covered and dumpsters shall be enclosed in gated fencing. The property shall be maintained free of trash accumulation not contained in proper receptacles.*

Mrs. Barnhill added that the application is in order.

Scott Buedel said to bring everybody up to speed from last month, this property being requested to be rezoned to C-1 has commercial zoning to the north, northwest, west, and to the south. He said the only non-commercial zoning is the ag. zoning to the east and one of the south properties owned by Exline. He said whenever everything was initially filed we knew that there had to be something done with the east adjoiner, they have a nice residence there so they offered to put up the berm as a nice buffer to the property and he thinks their initial submittal for the Use and Development Commitment was to construct the berm, put the trees on top, and do the directional lighting. He said after the last meeting on July 10<sup>th</sup> he submitted the new Use and Development Commitment to Anthony to give them time to look it over and come back with something if something else was desired. He said when they first got together at Anthony's office with the neighbors, they met on July 9<sup>th</sup> and they were provided at that meeting a revised Use and Development Commitment which had a number of items in it; some of them he thought were repetitive from the standpoint of what they will have to go through eventually when somebody tries to develop the property such as doing property drainage requirements as required by the county and state and those type of things. He said there were a few things that after he met with the owners of the property they went through the list of the items they requested and came up with a fair solution and compromise to their request. He said his initial submittal had 2 foot high trees but they were going to be sitting on top of a 5 foot berm initially so you are already gaining height there from a wood privacy fence and then as the years go by that's going to fill in and keep going up. He said the spacing on them, he had them a little bit further spaced out than what



they had wished and whenever they came up with a revised Use and Development Commitment after meeting with the owners of the property we pretty well meet in the middle of the spacing and the height at the time of planting so the 4 foot high tree, they requested 6 foot and he had 2 foot initially so they came up with 4. He said as far as the spacing goes he reduced that down, he had 16 initially and he put it down to the 10 that it is now and they had requested something less than that so they tried to meet in the middle. He said there were a few other things that were requested that they thought was overkill for what it is. He said they requested a fence on top of the 5 foot berm in addition to the trees planted very close together as a buffer. He said in talking to the owners they felt that the fence was not necessary, you are already going to have a 5 foot berm at the time of construction and then the trees, which will be 4 foot, so you're looking at a 9 foot high, granted to the tip of a pine tree at the time of planting, but as the years go by they are going to grow and these are fast growing trees that should fill in relatively quick. He said they have agreed to some of those things. He said there were a couple of things that were stated differently at the time of their request from the standpoint of how to make sure this gets done and they did add in their Use and Development Commitment on C for item C that the tree's shall be installed prior to obtaining a Certificate of Occupancy for the commercial site use. He said there were a couple of things in their request that were stated a little bit different, like putting up a bond to ensure that they are going to be installed but we feel like whoever develops that property with it's commercial use the C of O that they have hanging out there, to not be able to occupy the building that they just constructed if these trees and berm haven't been constructed, is a pretty big hammer to put out there to make sure it gets done. He said they brought up the death of the trees that if something happens to them that we would replace them, we did not have a problem adding that in there. He said there was some discussion on directional lighting. He said there were a couple of things crossed out in his initial request, the main thing is he had minimalized lighting to the east adjoiner and one of the things they came back with was to eliminate and he doesn't know if that is possible. He said there were a couple of things in there that they agreed to do and they feel like they compromised on what their initial proposal was and met them in the middle from the standpoint of their request back to us. He said so they did get together twice this last month. He said the last meeting was on August 7<sup>th</sup> at Anthony's office. He said they went over a couple of things that is on the new Use and Development Commitment that they have in front of them tonight. He said they didn't get very far and it ended abruptly. He said there were a couple of things that were being discussed at the time that he doesn't know if it caused it to end but one of them is they wanted them to commit to...one of the items they had said the property may not be utilized unless and until it is connected to a municipal sanitary sewer system. He said this particular property, just like the other commercial properties adjacent to it that have already been rezoned does not have the ability...it may have the ability but that's something that can be looked into later on, whether the cost is prohibitive or not, whether they do a septic system or try to get connected to the sewer but that is something that would be looked at during the design phase and the type of business that would go on here. He said if it's a small convenient store, doctors office, whatever that fits in C-1 he thinks a commercial septic system definitely takes care of it. He said there was some discussion about how that would be designed and how many bathrooms and he thinks they are getting into too many specifics at this point. He said right now if the property can get rezoned to C-1 with the Use and Development Commitment then as the development starts to take hold and we figure what can go there, what all will be permitted then the sizing of the septic system and all those type of features will

definitely be addressed. He said the drainage of course would be addressed through Warrick County. He said so once we get the commercial zoning a lot of the questions that have been discussed can be answered at that point in time.

The President asked for questions from the Board. Being none he called for any remonstrators to approach the podium.

Anthony Long, Attorney, approached the podium. He said the meeting he attended on August 7<sup>th</sup> ended when a person that he didn't know who it was declared that the Use and Development Commitment that they handed out to them, which sounds to be somewhat different than what they read tonight, was it take it or leave it this is all we are going to do. He said then we said well we are done then. He said they started discussing things, procedurally what had happened. He said Mr. Buedel sent a format of...he did a Use and Development Commitment following the format of what is in our book he guesses. He said what they do in their business is they do a red line version where they put in in red things they want to add or they strike it out if they don't agree to it. He said they sent it back to Mr. Buedel fairly quickly, he didn't keep the listing of the date and when they met the first time they agreed to meet on the 7<sup>th</sup>. He said that afternoon he received an email with the revised one that they had submitted and spent some time going through it, and didn't have a chance to get it to his clients before then, he went through to try to mark the things that he thought were different. He said the problem with the tree issue, Arborvitae's look like a Christmas tree and they are 4 foot trees, this big probably 2 feet or so at the bottom, on 10 foot centers so in essence what we've got is a 5 foot high berm, which we agreed to and a bunch of toothpicks sitting on top of it to block the view. He said so if his clients live long enough and these trees grow fast enough then at some point in time they'll get bigger. He said they thought to have an effective barrier, number one, they did propose 2 foot trees so probably 1 foot around the bottom, and they had it lesser than the entire boundary line between the property. He said he has not seen the one they sent to the Board, the one they gave to them was 4 foot trees on 10 foot spacing alternated that we did not think was effective. He said the landscape architect that they consulted, they did not ask them to deny it and then get a consultant to make the decisions on it, recommended that we put a wall up there. He said there is apparently one behind Target on the Lloyd that they used to block off the development between the commercial development and the residential behind it. He added the one they were directed to had both a wall and trees so they didn't think that was unreasonable. He said they did propose that the fencing could drop down after it got past most of the improvements of the Hobgoods. He said they agreed that when they said the light would eliminate, we thought that would be difficult to accomplish so we took the lead and researched how they do in other communities regarding lighting when commercial adjoins residential and one of our members came up with and defined a very precise lighting requirement that is utilized by at least one or more other government entities when these situations occur. He said they sent up to them, of what they thought the Use and Development Commitment should look like. He said he spoke with Mr. Doll today and he thought it would be better if they broke them out by individual requests and he did that this afternoon. Anthony Long handed out papers to the Board.

Attorney Doll said the reason why he did that was under section 1015 of the code, Commitments either offered by a landowner or imposed by the APC the approving of the rezoning, have to be

in writing and he mentioned to Mr. Long what he submitted previously was several pages that contained many different ideas and it would be better if the Board had several pages with single ideas or concepts and they could consider them one on one and if there is something in the that they feel is meritorious it could be acted upon and if it isn't it could be rejected. He said at least that was it's clear and meets the elements of the code.

Attorney Long said that is not a problem and he is going to go through them reasonably quickly because they are in the first documents which he hope was handed out. He said the first one, the number basically came out of the Use and Development format they were using. He said it talks about what he's already addressed and it's called site buffering. He said they want it on the entire east side of the property. He said on this it does say on the east side of the property and then references a drawing and if it's the same drawing we got, it doesn't go along the entire east side. He said it doesn't go nearly up to the front, at least the Sharon Road part of it, and there's a big gap to the end which looks like on the topo rendition it's a sloped area there. He said these are what we have presented and we think are reasonable. He said the lighting, this is reasonably detailed but this was taken from a governmental regulation and was paired down by, he said he didn't write this, it was a consultant they utilized, but it should be able to deal with the issues regarding lighting in the area. He said number 3, municipal sewers, he can't imagine a convenience store and a gas station that doesn't have at least 2 restrooms and ice machines; they generate water and they don't know. He said he was stunned. He said he like Scott, they've done business together before and he respects him but he is saying to them tonight that they haven't looked into yet to know if it's worthwhile. He said they think sewer is in the area, there is a gas station/convenient store across the street from this place and it's on sewer. He said it is in the area. He said he's told by Scott there has to be a bore under the highway or there's another site, I think he said 1000 feet away that they would have to run from their property to there and that costs money. He said well a development costs money, being able to utilize a property commercially makes money, and that is part of the cost of doing business. He said the sewer system is a deal breaker for us. He said septic systems are notorious in Warrick County as being less than desirable; they require maintenance and they are not feasible in his opinion for a commercial development. He said if it was impossible to put in a private treatment plant, if it wasn't anywhere near, but it's there. He said they've submitted one to them for surface water and he agrees it is governed by County and State regulations but the reason he thinks from an Attorney's standpoint is the enforcement mechanism that is generated by the Use and Development Commitment that they have proposed. He said trash receptacles, number 5, they ask that they be gated, fenced, maintained free of trash accumulation not contained in proper receptacles; they have language similar to that in the one read tonight, the dumpsters shall only be emptied between the hours of 8:00am and 6:00 pm. He said he doesn't think that is an unreasonable request. He said fire hydrants, they have some serious doubt, and have expressed that, whether or not the existing municipal water supply, which he believes is Newburgh, is a sufficient size on Sharon Road side of the highway to accommodate fire hydrants. He said fire hydrants, from his experience in representing municipalities, there are 2 kinds of hydrants. He said one are draining hydrants and one are fire hydrants. He said if you hook a fire truck, bumper truck up to a draining hydrant it wont work because it will pull the lines out of the ground, the vacuum that it generates. He said they are going to have tens of thousands gallons of fuel stored on this property, we think adequate fire protection and we didn't dictate anything

other than it would be there and it would be at site and approved by the fire authority having jurisdiction over the service area. He said they received an enforceability clause; he thinks number 7 that he submitted to them is enforceable by the residents. He said he corrected the improper statutory recitation in the form but apart from that, they believe it tracts the format they recommended in their proposed form and it also provides for the enforcement by the residents in the area. He said they have addressed the issue that it be perpetually in existence and not expire upon the conditions set forth in Indiana Code 36-7-4-1015. He said there is a provision in there that is statutory we believe in the third paragraph of it but it basically says folks in the neighborhood can enforce it and we've had the requirement and request the requirement of a performance bond for....one of the biggest troubles we've heard gas station/convenient store. He said they have told them fast track, racetrack, or something of the nature and we have really made a dogged search to see what kind of business they operate. He said it's sort of reminiscent of the old time political ad he saw where they had hound dogs in a political ad in Kentucky and they were out hunting their congressman who had missed a lot of sessions and they didn't find the congressman and they didn't find the fast track gas station that they could make a comparison with. He said they came here in good faith. He said they told them in the very first meeting, when they discovered C-1 was adequate, they were not going to fight that zoning. He said they thought if they could sit down and have a give and take they could come up with some requirements. He said he submits to them that they have made some progress, they got into some second drafts, and then they were advised by a gentleman who said he was one of the owners, they've never seen the developer, they are dealing with them to negotiate with them, and then they gotta go back and talk to the developer and say will this work. He said for some reason they have not introduced him or her into the mix. He said they are asking tonight if they want to push this to a vote, they are asking that they recommend their commitments that they are requesting that they have, they think they can live with that but otherwise we are asking them to deny it and let them start over and try to get some research done with the admonition that, do some of this preliminary stuff. He said in his business if he went in front of a judge and said well judge grant me a judgment in this case and after I go back and do a little more research, I will fill in the blanks as to how much I think is reasonable. He said he doesn't think he'd get very far; the judge would probably be laughing pretty hard and that's what they've asked for you to do. He said he doesn't know how much it costs to build one of these things but if he's starting down the road to put in an improvement he has to have some sort of business plan in mind and he has to know what his cost restraints are and know what he can or cannot afford and what's the projected revenue, and traffic counts and business decisions that you have to make. He said but they are just saying this sounds like a good idea and this guy is interested in it but these things that these folks are wanting to protect their homes and their life's biggest investments, they will decide later if we decide to this what we think is fair and who wins that argument; the pocket book. He said if it costs \$40,000 to run sewer to this property and they can get a septic system in there for \$15,000 do you think they really care if they are going to sell it and move down the road. He said he thinks if they are going to do what he thinks they are capable of doing and representing the folks that live in this county, they are going to tie them down to some commitments that say this is what we are going to require, we don't think they are unreasonable and then lets see what they can do to develop it.

The President stated they have 5 minutes left. He asked for any other remonstrators present.

President Gentry stated there was five minutes left. He asked if there were any other remonstrators for or against.

Nancy Micah stated she was a resident of Sharon Rd. in Rustic Hills. She said they moved here 32 years ago. She said she didn't know how many of you are familiar with that side of Sharon Rd. but there are some very nice homes. She stated the Hobgoods included. She said they have put a lot of money into making their property beautiful and it is always a pleasure to drive by their home. She said granted Rustic Hills is further down the road but she has to turn onto Sharon Rd. to go home and she personally doesn't want to see a commercial building specifically a gas station. She stated there is one right across the street. She said why ruin a beautiful property, like the Hobgood's. She stated she didn't care how many trees you put the fact that it is going to be there and she hoped that the Board would consider other options for this property use because it is a beautiful corner.

Margaret Dennis stated she lives in Ridgewood Subdivision. She said she is not immediately close to that development, but her big concern is the ground water and traffic increase. She said if you have been on Sharon Rd. that is a dangerous intersection already. She stated she has witnessed quite a few accidents happen there already, that is one of her big concerns that was not addressed by the others.

Attorney Doll stated he wanted verification and he can ask Anthony this question. He said Anthony looking at your first site buffering the difference between what you are asking for as a condition and what has been offered in a development commitment was; both sides agree on the construction of the berm and it's dimensions. He said it seems to be that they are the same.

Anthony Long stated yes.

Attorney Doll stated you are asking that the trees be planted be six feet tall and they are proposing four feet tall. He said you are indicating the spacing of the tree line be six feet apart and they are proposing ten feet apart. He said the line spacing offset would be three feet on a stagger and they are proposing eight feet on a stagger. He said you are also asking for a fence down the top of the berm they are not proposing the fence. He stated you are also asking for the berm to run the entire eastern property line of the site and they not proposing that, they are proposing, he is going to call it 2/3 of the property line, this is just a guess. He asked if that was a fair representation of what you are asking for as compared to what they have offered.

Anthony Long stated it is the bare reference; they had a landscaping architect consulted. He said they didn't just pull these numbers out of the air. He said they recommended an arborvitae.

Attorney Doll stated what he is trying to do is educate the Board with the differences between what you are asking for and what has been offered in a summary fashion.

Anthony Long stated we told them we didn't want any cedars. He said they have it on good sage advice not to use cedars. He said they do look a little like cedars but they are a healthy variety.

Attorney Doll stated your lighting specifications in number two are a lot more detailed that what has been proposed by the developer or owner. He asked if he could share information on where these specifications had been used elsewhere.

Anthony Long stated they are saying minimized but what does that mean. He said he agreed with Scott Beudel when they said eliminate that would be difficult and when they said minimize it doesn't mean anything.

Attorney Doll stated you handed me a set of specifications on lighting ...

Anthony Long stated in Fairfax County, Virginia.

Attorney Doll said on lighting standards from Fairfax County, Virginia.

Anthony Long stated they have that because the gentleman that was advising them on the architectural site design had done this type of work and he was familiar with it. He said he was asking for something that had been utilized otherwise.

Attorney Doll asked can this be retained by the APC or do you need it back.

Anthony Long said if you will make me a copy, he thought he had made copies. He said you could keep it either way he would get one later.

Attorney Doll stated your specifications on the sanitary sewer was, they are proposing a septic system in its traditional format and you are proposing that it needs to be connected to a municipal sewer. He said we have talked about that.

Anthony Long said he didn't know if they were proposing anything, are they.

Attorney Doll stated in prior meetings they indicated a septic system.

Anthony Long said but the use and development commitment does not state anything.

Attorney Doll agreed it didn't say anything about it. He said surface water they all agreed would be subject to the Warrick County Drainage Board approval just like all projects are.

Anthony Long stated as he made it in his presentation enforceability that is why they put it in there.

Attorney Doll stated trash receptacles yours is the same as what was proposed except you are asking to limit the time of day when the dumpsters may be serviced. He said you have inserted that.

Anthony Long stated we could get someone to pull up next to your house at 3:00 a.m. to dump the dumpster we will find out how that works.

Attorney Doll stated you have asked for fire hydrants and that was not addressed in the prior use and development. He said you have asked for enforceability language, which gives abutting property owners within a one-mile radius to go to court to enforce this if they need to do that. He said that wasn't addressed.

Anthony Long stated it was in their first submission to them. He said he guessed they had a second epiphany on that.

Attorney Doll stated no it is in here. He said lastly you have asked for performance bonds, your number eight, which wasn't included.

Anthony Long said as he said there were somethings they could have talked about more if there was an inclination to do that.

Attorney Doll asked if the Board understands the difference between what was being proposed and what was being asked for.

The Board all agreed they did.

Attorney Doll asked if Mr. Scott Beudel has been given a copy of what they are asking for.

Anthony Long replied yes. He said his didn't look like what he handed the Board. He said he received a copy of the draft that he prepared and he received it in the red line fashion. He said other than a couple of typos that he corrected it is identical to what he submitted.

Bob Johnson asked Attorney Long in your request are you stating if we vote to accept and rezone this property to "C-1" we need to do it with these stipulations.

Anthony Long replied yes.

Attorney Doll stated they are conditions.

Bob Johnson said or not zone it "C-1" at all.

Anthony Long replied yes.

Attorney Doll stated section 10-15 of the code indicates that a rezone petition may be approve with a use and development commitment provided by the property owner or as ordered to be applicable and that would be the power of the APC to order uses and development conditions to be applicable to the rezoning. He said what has been done was they have submitted what they are asking the Board to order and then the property owners have submitted what they are asking to be approved. He said you have two different versions.

Scott Buedel stated he wanted to go through a few things. He said he sent what you have in front of you to Anthony Long's office; it is the exact same version. He said he did send that to them around 2:00 to 2:30 in the afternoon and the meeting was at 5:30. He said he realizes it happened on the day of but they did have three hours prior to the meeting to be able to look over what they were proposing versus what they had given them the first time to see the differences. He said he knows it was made a point is the only reason he was saying this. He stated when they met on July 9 and they showed up at Anthony's office to meet and see what these requirements were. He said they were handed those when we sat down at the table. He said then we went through them one at a time. He said they did try to provide them ample time. He said it was only a few hours but they had already seen the prior version and what was changed was minimal but it was in relation to the requests that they already had as far as we agreed to and added them in or not. (Scott Buedel handed out an aerial photo showing where the berm would be) He said he tried to put an aerial photo behind the drawing in the use and development commitment. He stated he thought you could see the location of the berm and the trees extends to and beyond their buildings to the east of us. He said they feel like that provided the buffer that is required for where their improvements are. He said to keep the property separated they felt like the location would be adequate. He said as you can see on the contours when you start heading a little further to the south down the property line it dips off and takes off into a bowl there. He stated once you start heading down the property line much further and you are going to stay five feet above the existing ground elevation that berm is going to drop off along with the ground itself and not be a barrier itself at a certain point a little bit further down the property line. He said he thought the picture might help to show why they stopped it where they did. He stated the other thing that came up was if this was a fence he thought it might look at it differently. He said but it was a berm and the east adjoining property flows to us with their stormwater. He stated when the berm was constructed that water is going to hit the berm and then flow down the edge of the berm and get onto their property where it drops off at the end of it there. He said if they extend the berm all of the way to the south property line and the water is running down the east edge of the berm as it flows off their property it is going to dump right over the southern property line. He stated you could see there was a house down there and a driveway south of this property. He said it would dump straight over the property line and be directed towards the house so by stopping the berm where it is now the surface water that is coming off of the east adjoining property it will hit the berm and flow along the edge of it but get around the end of it. He said whenever the property would be developed as a commercial property there will be a stormwater retention basin in that natural location where it was the low part of the property. He said their surface water would flow right into the basin. He said he just thought the picture might help with that. He said there was a comment about traffic. He stated it hasn't really came up the last few times they talked but it was a big item on the initial meeting. He stated he did contact the Sheriff's office and they had done some research. He said there were four accidents at that intersection in 2017. He said he asked the person at the Sheriff's office if this was considered a high-risk dangerous intersection and they said by no means there are others as you start heading west that are much higher risk. He said as far as the list she gave him it included all of the recorded intersections for Warrick County for 2017 and this intersection was tied for 15<sup>th</sup> with another 10-20 intersections. He stated as you go down the list it started adding a bunch of intersections on there. He said it is a good way down the list from the standpoint of traffic. He said that would be something when a site plan is put together and put before Bobby and Steve



they aren't going to approve anything that just lets them arbitrarily dump traffic out onto a road that doesn't meet their standards. He said if a turn lane is required or a large radius is required at whatever location they are going to make us do that when the site plan would be approved. He said about the septic and the sanitary. He said there is sanitary about 1,000 feet south of them. He stated it is in a subdivision south of the "C-3" zoned property that is south of us. He said it is not actually on the commercial zoned property but they have access to it through an easement. He said there is a ditch and some other features there that would take full topography to make sure that it can physically... he knows it can go up a hill that isn't the problem. He said where the ditch is how they can get across the ditch. He said there are many things to consider to make sure that it can actually get up to the property and service this property. He stated there would be the adjoining property and one other property whether it is the State of Indiana or Exline that would have to grant them an easement to get to their property from the south. He said the one across the road that services the Marathon station. He said it is not up against the road right-of-way. He stated it is further off so whether there is an easement there or not that they could even have the ability to tie into it they aren't aware of at this time. He said if they were able to tie into it then the cost to come under SR 66 is going to be a very expensive sewer line to run for that few hundred feet to get to this one property. He stated it would probably be cost prohibitive to extend sewer across SR 66. He said if there would be sewer setting on this property then the proposed use would probably be a higher use from the standpoint of density that could go on the property since sewer would be accessible. He stated there has been a lot of talk about how many bathrooms there they would have and what all is going to take place in this development and why they don't have all of this designed at this time. He stated his comment had always been once they turn in a building plan and try to get a septic permit they would have to submit this to IDEM. He said they are going to have to go through the county to get the permit. He said they would have to size everything appropriately. He stated he did look up a commercial onsite sewage system for the State of Indiana. He said a small convenience store/gas station with fast food service is 1,000 gallons per day. He said this is probably equivalent to a 3-4 bedroom house. He said for how the State identifies properties and designs septic systems to handle these properties it is all laid out just like the ordinances in Warrick County, the State has the same thing you can do for septic systems. He said from the standpoint of septic versus sewer they feel like this one use of the property, this one commercial use, would be limited on what they can even do because it would be on septic. He stated they wouldn't be able to put up multiple buildings, multiple commercial buildings, and have too much flowing into the system because it would be a septic system. He stated if it were a sanitary sewer, they would be unlimited not necessarily from the zoning but on the amount of sewage that could be discharged off the site. He said they feel like they had an option for septic because it is an Indiana code that would allow and permit it. He stated it was done all of the time. He said the properties to the north, northwest, and south that are already zoned commercial do not have sanitary sewers sitting on their properties. He said they might have access to the sewers by another route just like they potentially do but those properties were rezoned just like they are asking be zoned commercial and now they have the possibility to develop that property with a higher use if they would choose to extend sewer to the site. He stated if they don't it might sit vacant for years to come. He said he knows Anthony would say there are a lot of specifics that they have asked for. He stated for almost every rezoning he doesn't know anybody that would go out and do a full topo, design the entire property, have it ready to go, ready to build, and then file it and ask if the property could

be rezoned and then get that turned down. He said making that huge investment up front and not knowing the outcome; whereas if the property would be zoned commercial like the adjoining properties then somebody would have the ability to then prepare those site plans and submit those and potentially get them approved and develop the property in accordance with Warrick County standards and Indiana standards. He stated there is water on the property. He said there is a large 20' easement on the property that is Indiana American's. He stated there is a good-sized water line that runs down SR 66 and is actually on the property, so access to water is not a problem. He stated there is a hydrant across the street at the Marathon. He said even though the spacing wouldn't kick it into that category if Indiana American would look at the site plan and say, you need to add a hydrant in front of this property because of its particular use, and it would be added while going through the site design and review process. He said right now there is water on the property so a hydrant being located on it would not be a problem. He said at the meeting with Anthony it was Bob Clayton and he is one of the owners of the property that spoke up at the last meeting. He stated he is an owner, he wasn't at the first BZA meeting, but he was at the last meeting, he came to the initial meeting at Anthony's office, and he was there at the second meeting at Anthony's office. He said he is an owner of the property along with Bill and Anita Felts.

Jeff Willis asked if they thought putting the trees any closer together would help or would it hurt the longevity of their life span if they were four feet verses eight feet.

Amanda Mosiman replied she could speak on this. She said the giant green arborvitaes typically can grow a maximum of eight feet so the spacing may be a little closer than ideal but that is in maximum growing conditions but urban environment six feet isn't too far out of the way. She said they could be shaped very easily, they are pretty free of pests, and very tolerant of climate and soil types so it is minimal but not ideal for six foot spacing but not out of the question.

Scott Buedel said to add to that, there are two offsetting rows of trees. He stated the gap between the two trees on one row was filled in right behind it with another tree centered in the gap on the backside so there are two offsetting rows. He stated they realize at the time of planting they aren't going to be mature trees and offer the full buffer but they are fast growing trees.

Amanda Mosiman stated the annual growth rate could be between two and four feet a year.

Scott Buedel stated in a short period of time the buffer would be somewhat substantial.

Anthony Long stated he brought Adam with him tonight and he knows how to use a computer. He said Adam googled giant arborvitaes spacing for privacy. He stated if you want this plant for privacy, they recommend spacing the trees five feet apart, this way they really grow together and maintaining healthy habitat for the trees. He said there is some other "C-3" in the area but it is vacant, it doesn't have anything on it, so they aren't using sewers or septic either one to their knowledge. He stated he doesn't think it is the purpose of this Board to say because it is expensive to do something they aren't going to make you do it. He said that is the issue at hand. He stated Scott has said several times they don't expect them to design the building they don't even know how big the building will be. He said that is what they have given you is just

somebody drawing some lines on there. He stated there hasn't been any thought process in the plan of that. He said they don't know how big this developer is going to make this thing. He said they don't know how many pump bays they are going to have, how many tanks they are going to have, what the projected flow rates are, or the usage rates of traffic. He said that is a limited access highway if a semi comes in there going toward Alcoa then he has to come back out on Sharon Rd. or come back out on SR 66 and do a U-turn at Sharon Rd. He stated is this a reasonable and use of the property where it is located and its impact upon the other folks. He said that is why we are here, not because it is inconvenient. He said there is a rather large water line along SR 66. He asked what does that mean, does it mean minimize the light rather large. He said to him a three-inch water line; he doesn't think a three-inch water line is going to carry a fire hydrant. He said that is a phone call. He said Indiana American how big is your line along SR 66, where does it go, where are your easements for the sewer that is across the road, how much does it cost to do a bore. He said they do bores all of the time, the Commissioners require bores all of the time because they don't want them digging up their roads. He stated boring is a common thing. He said that is how you get things done anymore. He said most highway crossings in his experience are borings today. He said this is not why they are here. He said they are here to determine if this is a reasonable use of the property, have they given you information that you feel comfortable that you would want to live next door to what they have going knowing if it is going to be something that would not be detrimental to your property.

Tom Haas with Marion Development stated he is one of the owners of the "C-3" property to the south that was talked about having the sewer easement. He said he has a drawing that was done in 1991 approved. He said he actually paid for sewer tap back in 1991 they owned a shop along the highway. He stated when the highway came along they took their buildings so they moved their buildings to Evansville. He said he has the drawing of the sewer accessing the offsite sewer. He said he didn't know if anyone would like to see it but he wants it back.

Attorney Doll stated if you give it to the Board for consideration it stays.

Tom Haas said that was his only copy.

Attorney Doll said if you would want to display it and show the Board but that is up to you.

Tom Haas said he could do that.

Attorney Doll asked if the applicant or the remonstrators would like to see where the sewer is.

President Gentry asked what the Board's wishes were. He said you saw what the applicant proposed and what the remonstrators and neighbors proposed. He stated now it is our authority to act upon that. He said the Board has to decide either to put stipulations on the property and the rezoning at this time or to accept as is.

Attorney Doll stated it is a recommendation only.

President Gentry stated it is a recommendation to the Warrick County Commissioners.

Doris Horn stated she had been to one of the FastTrack's up by Avon, IN off Ronald Reagan Expressway. She said they look like all of the other gas stations and stuff. She said her problem was they have access to the sewer and they aren't going to take advantage of this. She stated yes, they could bore under the road they just did that in Lynnville for the Dollar General Store. She said you have to put money out there if you are going to make money. She said she wasn't a big person on septic systems because you don't know what was going to happen down the road with septic systems. She added there is a lot of usage in these gas stations. She said people go in while traveling and use the restrooms that is just part of life. She stated you don't know for sure that is the equivalent of a four bedroom home. She asked if this gas station was going to stay open 24 hours a day or was it going to be limited hours like the one in Lynnville. She said they close at 10:00 p.m.

Scott Buedel responded that it would potentially be a 24-hour station. He said one thing to add like Tom said he had that put together in 1991, he wanted to do a development there, he has access to the sewer but he hasn't constructed the sewer yet because it costs money. He said just like him if they chose to rezone the property "C-1" and someone came in with a higher use and they wanted to divide it to put in multiple houses or businesses and that was what somebody's wishes were then they would come to the same conclusion that Tom did. He said until you bring the sewer in there it isn't going to happen it is going to sit vacant just like his "C-3" property and the "C-3" property on the north side of the road. He said those properties were rezoned without sewer access. He stated he had a plan put together in 1991 that said this is how he could get sewer to the site but has chosen not to act on it up to this point. He said he knows sewers in the area and once you start the process of going out and measuring the inverts of the manholes and checking if there are easements available to access every one of the manholes, once the property is a viable option where it is commercial. He stated they don't know if the elevation of the manhole across the street at the Marathon is deep enough to gravity flow across the highway. He said it may be but it may not be. He said until they do the full design, go over and shoot these things and turn everything is they wouldn't know if it was available or not. He stated it is not they have the option of doing septic, or they should, just like Tom would have the option of doing 2 ½-acre lots just like they are.

Doris Horn stated (inaudible) as far as the manholes. She said she was on the Board up at Lynnville and they are doing a sewer treatment plan upgrade right now. She said the gentleman that runs their town could go out, look at it, and tell you if it is going to be high enough.

Scott Buedel stated the one manhole he has should work, but it is so far away and there are a couple of ditches and another piece of property that would have to be crossed in addition to Tom offering an easement to them.

Doris Horn stated you could also bore underneath.

Scott Buedel answered potentially, if that sewer was sitting in an easement in the right-of-way that they can actually connect to it. He said if the property gets zoned "C-1" and they decide to develop this property and they say it is sanitary sewer only and they look at the cost and see what

it would be then it would sit vacant just like Tom's property and the properties across the street. He stated until it makes sense business wise they aren't going to put the sewer in and they would sit on it. He said they would want to make sure there is an end use for it.

Doris Horn said let me ask you another question. She asked the FastTrack they are talking about putting in this is a chain correct.

Scott Buedel replied yes.

Doris Horn stated they would have the money, they would know what the ability is on whether they would put the sewer in versus going septic. She stated this wasn't the first FastTrack they would be building.

Scott Buedel replied no.

Bob Johnson asked if the owners of the land going to develop this land or sell it.

Scott Buedel replied the property has been on the market for a number of years zoned as agricultural. He said the reason it hasn't sold was that it wasn't an appropriate location for somebody to buy to put a single-family house on. He stated it is at a commercial intersection the other three quadrants of the intersection are already zoned commercial and it is sitting there like a commercial property it just doesn't have the zoning. He said the potential buyer coming in was not going to buy the property unless it has the appropriate zoning.

Attorney Doll asked but they intend to sell it. He said the thought that was the question.

Scott Buedel replied correct.

Jeff Willis made a motion to recommend the approval of PC-R-18-10.

Tom Haas asked to address the Board.

President Gentry said no, there is a motion on the floor.

Tom Haas said he wasn't allowed to address the condition he said on why they hadn't developed the land was because he has been on the west side of Evansville. He stated they had developed 120 lots, 120 condominiums in the last 10-15 years and had been busy other places. He said money wise you go where the investment was at the time.

President Gentry stated there was a motion on the floor and asked for a second.

Attorney Doll asked if it was with or without the development commitments.

Jeff Willis replied with the Felts' conditions.

Attorney Doll stated your proposal to approve it with the developer's development commitments.

Jeff Willis replied correct.

The motion was seconded by Bill Byers with several opposed to the motion. The President asked for a roll call.

Bill Byers, yea; Guy Gentry nay; David Hachmeister, yea; Bob Johnson, nay; Amanda Mosiman, nay; Doris Horn, nay; Jeff Willis, yea.

Mrs. Barnhill stated that is 3 in favor, 4 opposed.

The President stated being there are no other motions PC-R-18-10 will go to the September 10, 2018 Commissioners meeting at 4:00 p.m. with no recommendation showing a vote of 3-4. (Attorney Doll and Sherri Rector, Executive Director both agree that this is an unfavorable recommendation per State Statute.)

**PC-R-18-12– Long Law Office, P.C. by Anthony Long, Attorney** to rezone 30 acres located on the E side of Eby Rd. Approximately 0' NE of the intersection formed by Hart Rd. and Eby Rd. from an "M-2" General Industrial to "A" Agricultural Zoning District, Hart Twp. *Complete legal on file. Advertised in the Standard August 2, 2018.*

Anthony Long and Ron Bennet were present.

President Gentry called for a staff report.

Mrs. Barnhill stated we have all of the return receipts and the minimum lot size for Agricultural zoning is ½ acre. She said there is no projection for this area and it is vacant. She stated all of the surrounding properties are vacant. She said the surrounding property to the west is zoned "M-2" General Industrial and the rest of the surrounding properties are zoned "A" Agricultural. She stated they plan to split the property into two parcels and sell a five-acre parcel off the north end. She stated they are down zoning to be able to do that with a simple parcelization instead of a major subdivision that would be required with the "M-2" zoning. She said there is no flood plain and the parcel fronts Eby and Hart Rd. She said the stated use is agricultural and that is in compliance.

Anthony Long said he wanted to add a little history about this parcel. He said this was rezoned a long time ago a 30 acre tract. He stated he could only surmise that Peabody was storing powder there and somehow they need an "M-2" zoning. He said Eby Rd. had been relocated so out of the 30 acres there are 17 or 18 ½ acres or something like that, that is subject to what they were talking about. He stated it is all showing as industrially zoned. He said this was acquired by Prime Food Holdings as a part of the infamous chicken and egg case. He said Prime Food Holdings and himself have reached an accord and settled their differences. He stated part of the 18 acre tract they are going to deed to his company. He said he was told by the Area Plan office

that you couldn't parcelize an "M-2" zoning district that it would have to be rezoned first. He stated they have already hired surveyors to survey it and do the parcelization. He said they had to get the rezoning done. He stated Ron Bennet from Prime Foods, who is the owner, was there. He stated he could confirm that they are supporting this. He said he asked Morrie earlier and here is the stipulation of the dismissal (inaudible he walked away from the microphone). He said they have the settlement agreement has been fully executed; Dirk is holding all of the paperwork until all of this comes to pass. He stated it wasn't a big deal they aren't going from Agricultural to "M-2" this shouldn't be controversial he thought. He said they are going to parcelize it and he will end up with five acres of the 18 acres and Prime Foods will have the rest. He stated they had made peace and he was looking forward to being a good neighbor with them and Prime Foods with them.

Ascertaining there were no remonstrators or questions, the President called for a motion.

Bob Johnson made a motion for a positive recommendation to the Commissioners on PC-R-18-12. Doris Horn made a second and the motion carried unanimously.

President Gentry stated this would be going to the Commissioners meeting on September 10, 2018 at 4:00 p.m. with an approval for recommendation.

**PP-18-10 CSV Acres #3 by James R. Vanada OWNER: James R. Vanada, Ruth Ann Stevenson, Daniel E. Vanada, and Nancy V. Hasting.** 11.977 acres located on the N side of SR 66. Approximately 1800' W of the intersection formed by SR 66 and Vanada Rd. Lot No. 3 in CSV Acres #2 Minor Subdivision. Anderson Twp. *Complete legal on file. Advertised in the Standard August 2, 2018.*

Don Gries, with Easley Engineering and James Vanada were present.

President Gentry called for a staff report.

Mrs. Barnhill stated we were missing one return receipt from Shirley Wood but we do have all of the certified mail receipts and it was mailed correctly. She said the zoning was "M-2" General Industrial and "FP" which is the old flood plain layer that was still on there. She said the entire property is in the "AE" flood plain and they are proposing two non-buildable lots. She stated this development is located on a state highway so no plans are required for their street construction plans. She said there are two existing entrances on SR 66; which have been permitted through INDOT and the state has submitted a letter stating that if they change the use of the property then a new driveway permit would be required. She said the drainage Board approved no drainage plans are required. She stated there are Indiana American water lines in place and available. She said the proposed development states "Indiana American Water Company has been leasing a portion of this property. They are splitting the lot where the leased area is so they can sell the remainder, which was being used by a concrete company. Neither lots are to be building sites." She stated maybe the conditions would be if there were a change of use to get INDOT approval for the entrances. She said everything is in order.

Don Gries stated the use of the property would remain the same there are no new buildings or new improvements were planned, it is for the sale of the real estate to a buyer who has held interest and lease for the property for numerous years. He said they would ultimately like to purchase it and have control of it.

Ascertaining there were no remonstrators or questions, the President called for a motion.

Amanda Mosiman made a motion to approve PP-18-10. The motion was seconded by Bob Johnson and approved unanimously.

**OTHER BUSINESS:** None

**ATTORNEY BUSINESS:**

Attorney Doll stated it was announced after PC-R-18-10 it would go to the Commissioner's without a recommendation and he thought that was incorrect. He said he thought it failed. He said there was a negative majority 4-3. It failed to pass.

President Gentry would be if it were to happen but he doesn't think you could say it was a recommendation for a disapproval either. He said he thought it needed to go ...

Attorney Doll stated report it to the Commissioners' that it failed four to three. He said let them interpret that as they wish.

President Gentry said he agreed with that.

**EXECUTIVE DIRECTOR BUSINESS:** None

Doris Horn made a motion to adjourn the meeting. The meeting was seconded by Amanda Mosiman and the meeting adjourned at 7:51 p.m.

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Guy Gentry, President

ATTEST:

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Molly Barnhill, Assistant Director